THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23319 OF 2005

ORDER:

This Writ Petition is filed seeking a declaration that the order of the 1st respondent dated 22.10.2005, whereunder, the petitioner, who is a registered contractor, was black-listed for six months, as arbitrary and illegal.

It is stated that the petitioner is a Class-II registered contractor for erection of lines up to 32 KVSS, up to a monetary limit of Rs.5.00 lakhs in the Operation Circle of the 1st respondent-Southern Power Distribution Corporation of A.P. Limited, Nellore. It is also stated that he was enlisted as a contractor in the year 1994, and ever since, he has been carrying on the works of the Electricity Department. While so, the 1st respondent issued a show cause notice dated 31.08.2005, calling upon the petitioner to explain as to why he should not be black-listed in the list of the registered contractors of Operation Circle, Nellore, for the alleged irregularities committee by him, besides effecting recovery of the alleged loss sustained by the 1st respondent. The irregularities mentioned in the show cause notice are as under:

" 1. The concreting of poles and stays in certain locations are not as per the standards as specified in the specifications vide L.S. Agreement No.159 & 172/2004-2005.

2. It was also noticed that the material like discs, stay wire, 11 KV Pins, back clamps, tapping channels etc., were purchased by the contractor and the purchase bills were not produced.

3. The work was not done at location Nos.10.17, 18 & 19 of L.S. Agreement No.159/04-05 but the bill was claimed though the works were not completed as on the dates of inspection. Similarly it was noticed that the stringing of 33KV/11KV line work was not taken up at location from 1 to 10 and 23 to 32 of L.S. Agreement No.172/04-05"

It is relevant to note that the show cause notice itself shows that the same is based on the Vigilance Enquiry Report dated 17.08.2005 received from the Chief Engineer/O&M APSPDCL/Tirupati. It is not in dispute that in response to the said

show cause notice, the petitioner submitted a detailed explanation dated 6.10.2005 denying all the allegations made in the show cause notice and requesting to drop the proceedings initiated against him.

It would be appropriate to extract the following paragraphs from his explanation.

> " 1. The concreting of poles and stays has been carried out as per the specifications of the agreement and instructions of the Assistant Engineer/Operation/Town II/Kavali without compromising anywhere. If, I would have committed any mistake in executing the work, definitely it would have been pointed out by the Departmental Engineers who were in charge of the work.
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> 2. The materials like discs, stay wire, 11 KV pins, back clamps, tapping channels etc., were purchased from local market and used for the execution of the work only after they have been cleared by the Departmental Engineers in charge of the work. The purchase bills were handed over to the Assistant Engineer/Operation/Town II/Kavali at the time of preparation of my bills.
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> 3. The bills were prepared by the concerned Assistant Engineer only for the portion of work done and the bills were duly check-measured by the Assistant Divisional Engineer and the Divisional Engineer. It is not understood how can a contractor claims the bill for himself. Stringing of 33 KV/11 KV line or whatever the work may be the bills were prepared by the concerned Assistant Engineer only after completion of the work to the full satisfaction of the department."

Thereafter, the 1st respondent passed the impugned order dated 22.10.2005 stating that after careful examination of the Vigilance Report and the explanation of the petitioner, he arrived at a provisional conclusion to award the punishment of black-listing the petitioner for six months from the registered contractors list of Operation Circle, Nellore, besides effecting recovery of the loss sustained by the 1st respondent.

The said order is under challenge in this Writ Petition primarily contending that since the said order was passed without furnishing a copy of the Vigilance dated 17.08.205, the same is arbitrary, illegal and in violation of the principles of natural justice. It is also contended that the impugned order, which is devoid of any reasons, is in violation of the principles of natural justice and on that ground also, is liable to be set aside.

On behalf of the respondents a counter-affidavit has been filed, in which, it is stated that the impugned order has been passed on the basis of the Vigilance Enquiry

Report of the Chief General Manager, HRD/SPDCL/Tirupati, who instructed the 1st respondent to issue notice to the petitioner for the irregularities in erection of certain line works, and to take necessary action. Accordingly, show cause notice was issued to the petitioner and having considered the explanation submitted by him, the impugned order was passed. Hence the impugned Order does not suffer from any infirmity, and no interference is warranted by this Court.

I have heard the learned counsel for both parties and perused the material on record.

The learned counsel for the petitioner submitted that the impugned Order which is *ex facie* illegal, and in violation of the principles of natural justice, is liable to be set aside.

On the other hand, the learned Standing Counsel, appearing for the respondents, vehemently contended that the petitioner never requested to furnish a copy of the Vigilance Enquiry Report, and therefore, the mere fact that the copy of the said report was not furnished to the petitioner is immaterial, and, does not vitiate the proceedings.

As can be seen from the material on record, it is not in dispute that the impugned proceedings were initiated against the petitioner on the basis of the Vigilance Enquiry Report dated 17.08.2005. The specific plea of the petitioner that a copy of the said report was not furnished to him has not been controverted in the counter-affidavit filed by the respondents. However, the contention of the respondents is that since the petitioner did not ask for a copy of the report, the respondents are not obligated to furnish the same. I am unable to agree with the said contention. Since, admittedly, the Vigilance Report forms basis for the impugned proceedings, the principles of natural justice require that a copy of the same shall be made available to the petitioner, thereby, affording him an opportunity to rebut the allegations effectively. As a matter of fact, the specific case of the petitioner is that the entire work has already been completed and the bills prepared by the concerned Assistant Engineer were duly check-measured by the Assistant Divisional Engineer, and, therefore, the allegation that the work was not properly executed is absolutely false and without any basis. Hence, the respondents are bound to furnish a copy of the said Report to the petitioner.

That apart, a bare perusal of the impugned Order shows that the 1st respondent did not apply his mind to the explanation offered by the petitioner. The 1st respondent neither assigned any reasons nor recorded his findings as to the allegations specified in the show cause notice, but merely observed that on the basis of the Vigilance Report, it was provisionally concluded to award the punishment of black-listing the petitioner for a period of six months. The impugned order appears to be a unilateral decision, and the show cause notice is nothing but an empty formality.

The law is well-settled that absence of reasons is one of the grounds for judicial review under Article 226 of the Constitution of India, since the failure of the authority to assign reasons would result in violation of the principles of natural justice.

Accordingly, the impugned order is set aside and the writ petition is disposed of with a direction to the 1st respondent to furnish a copy of the Vigilance Report dated 17.08.2005 to the petitioner. On receipt of such report, it is open to the petitioner to submit additional explanation, if any, within a period of two weeks thereafter, in which event, the 1st respondent shall consider the same afresh and pass appropriate orders in accordance with law. No costs.

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5th December, 2005. **(G. ROHINI, J.)**

Kgr

Furnish CC in two days.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23319 OF 2005

5th December, 2005.

Between:

V. Rmana Reddy. .. Petitioner.

And

Southern Power Distribution Corporation

of A.P., Limited, (Operation Circle,

Nellore, represented by the Superintending

Engineer (Operation), Nellore and two others. .. Respondents.